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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROSS WEINTRAUB, Derivatively on Behalf of Nominal
Defendant TESLA MOTORS, INC.,

Plaintiff,

v.

ELON MUSK, BRAD W. BUSS, IRA EHRENPREIS,
ANTONIO J. GRACIAS, STEVE JURVETSON,
HARALD KROEGER, and KIMBAL MUSK,

Defendants,

-and-

TESLA MOTORS, INC., a Delaware corporation,

Nominal Defendant.

X Case No. _____

**VERIFIED SHAREHOLDER
DERIVATIVE COMPLAINT**

JURY TRIAL DEMANDED

X

1 Plaintiff Ross Weintraub (“Plaintiff”), by his attorneys, alleges for his Verified
2 Shareholder Derivative Complaint against defendants upon personal knowledge as to himself
3 and his own acts, and as to all other matters upon information and belief based upon, *inter alia*,
4 the investigation made by and through his attorneys, as follows:

5 **SUMMARY OF THE ACTION**

6 1. This a shareholder’s derivative action brought on behalf of nominal defendant
7 Tesla Motors, Inc. (“Tesla” or the “Company”), by one of its shareholders against certain of the
8 Company’s officers and members of its Board of Directors (the “Board”), alleging that these
9 officers and directors (collectively, the “Individual Defendants” as defined herein) breached their
10 fiduciary duties by failing to ensure that the Company had adequate internal controls and
11 oversight mechanisms and willfully and/or recklessly causing or allowing the Company to issue
12 false and misleading statements or failing to disclose material adverse facts about Tesla’s
13 business, operations and future prospects.

14 2. Tesla’s website boasts that the Company was founded “by a group of intrepid
15 Silicon Valley engineers who set out to prove that electric vehicles could be awesome.” The
16 Company claims to “challenge custom and question tradition” in the conduct of its business,
17 diverging from the customary and well-established practices of other automobile companies.

18 3. Following the financial crisis, Tesla co-founder, Elon Musk (“E. Musk”), gained
19 operational control over Tesla, adding the role of Chief Executive Officer (“CEO”) in October
20 2008 to his titles of Chairman and Product Architect. In this capacity, E. Musk oversaw daily
21 operations, including production of Tesla’s first vehicle, the Roadster, which it had launched in
22 2008, and the development of its second vehicle, the Model S, which it later launched in 2012.

23 4. The popularity of Tesla’s vehicles in the marketplace has been marginal at best.
24 Only 2,500 Roadsters were sold during the four year period from 2008-2012. Roadster
25 production ended in January 2012. Tesla began delivering Model S vehicles in June 2012. By
26
27

1 August 7, 2013, Tesla had sold only about 13,000 Model S cars. The number of Model S
2 vehicles sold rose to just 25,000 by December 31, 2013.

3 5. Notably, by summer 2013, Tesla had never reported a net profit on its audited
4 GAAP financial statements. Thus, to fund operations, Tesla relied on two sources of capital: (i)
5 funds raised through accessing the capital and debt markets; and (ii) the payments from Zero
6 Emissions Vehicle (“ZEV”) credits it sold to other automakers.¹ However, as the relevant time
7 period began, both of these sources had been fully tapped, such that it was incumbent upon Tesla
8 to ramp up the sales volume of the Model S, its *only* product available for sale.

9 6. In spite of its very limited track record, by August 2013, Tesla began touting the
10 Model S’s performance in certain government-sanctioned safety testing in order to boost sales of
11 the fledgling vehicle. In particular, the U.S. Department of Transportation’s National Highway
12 Traffic Safety Administration (“NHTSA”) gave the Model S a Five-Star Rating in a limited
13 crash testing in or about August 2013.

14 7. From this point forward, the Individual Defendants allowed the Company to
15 embark on a campaign of false and misleading statements designed to convince the market that
16 the Model S was literally the safest car in existence, that it had outscored other five-star
17 automobiles and that it had achieved a record composite score. Indeed, the first of such press
18 releases was issued by Tesla on August 19, 2013, and was falsely titled, “Tesla Model S
19 Achieves Best Safety Rating Of Any Car Ever Tested.”

20 8. The Company’s marketing campaign caused the NHTSA to criticize Tesla’s
21 characterization of the government’s safety rating and to issue a rare clarification of its rating
22 system. Moreover, Clarence Ditlow, the director of the Center of Auto Safety called Tesla’s spin
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25

26 ¹ To combat air pollution, the California Air Resources Board requires all carmakers to sell a
27 certain number of electric vehicles in the state. Those that fail to reach the quota can purchase
ZEV credits from other automakers, like Tesla, in the open market.

1 on the score misleading, noting that: “No matter what, you *can’t* say it’s the safest car ever
2 tested.”²

3 9. In addition to allowing Tesla to mischaracterize the Model S’s Five-Star Rating,
4 the Individual Defendants also caused or allowed the Company to misrepresent the low height
5 and configuration of the Model S battery pack as enhancing the vehicle’s safety, without
6 disclosing its very significant vulnerabilities for high-intensity fires.

7 10. In fact, the Individual Defendants egregiously allowed the Company to
8 misrepresent the Model S’s history of fire incidents which included at least three very significant
9 fires requiring first responder intervention. Two of the fires resulted from spontaneous ignitions
10 of batteries. A third fire was from a Tesla crash test that spiraled into an out-of-control blaze,
11 and was attributed to “failure of equipment or heat source.”

12 11. Nevertheless, defendant E. Musk falsely claimed that “[t]hroughout all our crash
13 tests, throughout all similar incidents with vehicles on the road, *never once has there been a*
14 *fire.*” When a Model S fire later occurred during the relevant time period, a Tesla spokesperson
15 falsely stated, “This is the *first* fire.” Thus, by the third Model S fire, the Individual Defendants
16 were still causing or allowing Tesla to represent that there were low probabilities of such fires
17 while simultaneously denying that a recall was necessary.

18 12. They claimed that Tesla had independently ensured through rigorous testing that
19 *all* parts of the Model S were 5-star safe, stating: “After verifying through internal testing that
20 the Model S would achieve a NHTSA 5-star rating, Tesla then analyzed the Model S to
21 determine the weakest points on the car and retested at those locations until the car achieved 5
22 stars no matter how the test equipment was configured.”

23 13. Despite these efforts to understate the risk of catastrophic damage to Tesla’s
24 Model S fleet from undercarriage puncture and to conceal prior battery fires, widely publicized
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27 ² At all times, emphasis is added unless otherwise indicated.

1 reports of fire incidents involving the Model S during October and November 2013 caused
2 Tesla's share price to plummet.

3 14. First, investors were shocked when a Model S was completely destroyed on
4 October 2, 2013, due to an undercarriage puncture and high-intensity battery pack fire caused by
5 a collision with road debris in the state of Washington. While Tesla initially denied that the car's
6 battery pack had ignited the fire, it later reversed course and admitted that the battery pack was
7 indeed the source of the blaze after being punctured by road debris encountered during normal
8 driving conditions. On the negative news, Tesla stock declined \$12.05 per share or more than
9 6%, to close at \$180.95 per share on October 2, 2013, only to drop another \$7.64 per share (or
10 4.2%) to close at \$173.31 per share on October 3, 2013, amid derisive press coverage of the fire
11 and on high volume both days.

12 15. In seeking to reassure investors, the Individual Defendants caused the Company
13 to downplay this incident. Indeed, defendant E. Musk gave several interviews during which he
14 downplayed this Model S fire and worse, failed to disclose that another Model S had been
15 consumed by fire in Mexico on October 18, 2013. It has even been alleged in the related federal
16 securities class action lawsuit³ that individuals at Tesla were immediately aware of the fire and
17 sent a team to inspect the vehicle before defendant E. Musk made his foregoing representations
18 to the public. According to allegations in the Federal Securities Action, defendant E. Musk, with
19 knowledge of the fire and inspection, unilaterally determined that the fire was not relevant to
20 investors due to the circumstances under which it arose. However, when the public finally
21 learned of the incident on October 28, 2013, Tesla's shares again plummeted, dropping \$7.32
22 (4.3%) on heavy volume to close at \$162.86.

23 16. On November 7, 2013, yet another Model S was destroyed by a high-intensity
24 battery fire after road debris punctured its undercarriage under normal driving conditions, this
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26 ³ *In re Tesla Motors, Inc. Securities Litigation*, Case No. 3:13-cv-05216-CRB (N.D. Cal.)
27 ("Federal Securities Action").

1 time in Tennessee. Once again, Tesla's stock price fell, closing at \$139.77, down \$4.42 (3.06%)
2 from its opening price of \$144.19, on heavy volume.

3 17. Thereafter, federal regulators opened an investigation and the Individual
4 Defendants were forced to admit the vulnerabilities of the Model S as it had been introduced to
5 the marketplace when, on November 18, 2013, Tesla issued an over-the-air software update that
6 lifted the Model S's driving height at highway speeds and expanded the Model S's warranty to
7 cover damage from battery fires. On this news, on November 18, 2013, Tesla's stock price
8 dropped \$13.87 to close at \$121.58.

9 18. The Individual Defendants' wrongful conduct has significantly and materially
10 damaged the Company. By virtue of the Individual Defendants' breaches of fiduciary duties, the
11 Company faces a lawsuit alleging violations of the federal securities laws and Tesla has suffered
12 significant disruption of, and damage to, its business, its reputation and goodwill.

13 19. As a result of the misconduct described herein, current members of Tesla's Board
14 are antagonistic to this lawsuit such that making a demand on the Board would be futile. Each of
15 the Individual Defendants faces a substantial likelihood of non-exculpated liability for their
16 breaches of fiduciary duty disabling the current Board members from impartially considering the
17 subject matter of this lawsuit.

18 **JURISDICTION AND VENUE**

19 20. This Court has jurisdiction over all claims asserted herein pursuant to 28 U.S.C.
20 §1332(a)(2) because complete diversity exists between Plaintiff and each defendant, and the
21 amount in controversy exceeds \$75,000. This is not a collusive action designed to confer
22 jurisdiction on a court of the United States that it would not otherwise have.

23 21. This Court has jurisdiction over each defendant named herein because each
24 defendant is either a corporation that conducts business in and maintains operations in this
25 District, or is an individual who has sufficient minimum contact with California so as to render
26

1 the exercise of jurisdiction by this Court permissible under traditional notions of fair play and
2 substantial justice.

3 22. Venue is proper in this Court pursuant to 28 U.S.C. §1391(a) because one or more
4 of the defendants either resides in or maintains executive offices in this District, a substantial
5 portion of the transactions and wrongs complained of herein, including defendants' primary
6 participation in the wrongful acts detailed herein and aiding and abetting and conspiracy in
7 violation of fiduciary duties owed to Tesla, occurred in this District and defendants have
8 received substantial compensation in this District by doing business here and engaging in
9 numerous activities that have an effect in this District.

10 **PARTIES**

11 23. Plaintiff is, and at all relevant times was, a shareholder of nominal defendant
12 Tesla. Plaintiff is a citizen of Pennsylvania.

13 24. Nominal defendant Tesla is a Delaware corporation with its headquarters at 3500
14 Deer Creek Road, Palo Alto, California 94304. Tesla was founded in 2003 and went public on
15 June 29, 2010. Tesla utilizes a proprietary technology to create highway capable electric
16 vehicles. The Company's Tesla Roadster entered production in 2008 and its Model S in 2012.
17 Tesla sells its vehicles through Company-owned sales and service centers. Tesla is a citizen of
18 both Delaware and California.

19 25. Defendant Elon Musk ("E. Musk") is the Chairman, Product Architect and Chief
20 Executive Officer of Tesla. E. Musk co-founded Tesla and continues to oversee the company's
21 product strategy -- including the design, engineering and manufacturing aspects of the business.
22 As Chairman and Product Architect, E. Musk helped design the Company's Tesla Roadster. In
23 October 2008, he took on the additional responsibility of CEO, overseeing daily operations as the
24 Company was ramping up Roadster production and accelerating the development of its second
25 vehicle, the Model S. E. Musk launched Tesla's regional sales and service centers across two
26 continents and in May 2009 secured a \$50 million investment and strategic partnership from
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1 Germany's Daimler. According to the Company's website, E. Musk spearheaded a successful
2 cost-down program that enabled Tesla to achieve profitability in July 2009. He guides
3 development of the Model S, the all-electric family sedan that is produced at the Tesla Factory in
4 Northern California. The Tesla Factory employs approximately 1,000 workers. In addition to
5 his Tesla duties, he serves as CEO and CTO of SpaceX, and E. Musk is also the Chairman of
6 SolarCity. Upon information and belief, E. Musk is a citizen of California.

7 26. Defendant Brad W. Buss ("Buss") currently is and has been since 2009, a director
8 of Tesla. Buss also serves on the Company's Nominating and Governance Committee, the
9 Compensation Committee and is Chairman of the Audit Committee. Buss has been chief
10 financial officer, corporate secretary and executive vice president of finance and administration
11 at Cypress Semiconductor Corp. since August 2005. Before joining Cypress, Buss was vice
12 president of finance at semiconductor company Altera Corp., where he was active in all aspects
13 of the business including forging alliances and guiding strategic direction for global supply chain
14 and sales channel management. Upon information and belief, Buss is a citizen of California.

15 27. Defendant Ira Ehrenpreis ("Ehrenpreis") is and has been since 2007, a director of
16 Tesla. Ehrenpreis also serves as Chairman of both the Company's Nominating and Governance
17 Committee and the Compensation Committee. Ehrenpreis has been General Partner with
18 Technology Partners since 1996. He leads the firm's Cleantech investment practice, investing in
19 Energy Technology, Water Technology, and Advanced Materials opportunities. In the venture
20 capital community, Ehrenpreis serves on the Board and Executive Committee of the National
21 Venture Capital Association ("NVCA") and on the Board of the Western Association of Venture
22 Capitalists ("WAVC"). He is also the Co-Chairman of both the VCNetwork and the YVCA, two
23 non-profit organizations comprising more than 1,000 venture capitalists. In the Cleantech sector,
24 Ehrenpreis has served on several industry Boards, including the Clean-Tech Investor Summit
25 (2005, 2006, 2007, 2008, 2009, and 2010 Conference Chairman), Cleantech Venture Network
26 (Past Chairman of Advisory Board), ACORE (American Council on Renewable Energy), Energy

1 Investors Forum (Past Conference Chairman), Energy Venture Fair, and California Climate
2 Change Advisory Board. He has also served on the Advisory Boards of the Southern California
3 Tech Coast Alliance, Forum for Women Entrepreneurs (FWE), and the Comerica Venture
4 Capital Advisory Board. Ehrenpreis is also an active leader at Stanford University, where his
5 contributions have included teaching the course on Venture Capital and serving on the Board of
6 Visitors of Stanford Law School. Upon information and belief, Ehrenpreis is a citizen of
7 California.

8 28. Defendant Antonio J. Gracias (“Gracias”) is and has been since 2007, a director
9 of Tesla. Gracias is also a member of the Company’s Audit Committee, the Nominating and
10 Governance Committee and the Compensation Committee and serves as the Board’s Lead
11 Independent Director. Gracias also serves as Valor’s Chief Executive Officer and Chairman of
12 the Investment Committee. His duties include overall responsibility for the Firm’s management,
13 operations, and investing. These include but are not limited to: human resources, management of
14 the Firm’s board, raising capital, limited partner communication, deal generation, investment
15 selection, investment strategy, investment committee management, transaction structuring, and
16 portfolio company management and improvement. Gracias has over 15 years of experience
17 investing in a variety of sectors including private equity, public equity, and real estate
18 transactions. Gracias is Valor’s Founder and Chief Executive Officer. Prior to founding Valor
19 in 2001, Mr. Gracias served as Founder and Managing Member of MG Capital from 1995
20 through 2000. MG Capital was a private equity firm headquartered in Chicago, Illinois. As the
21 lead transaction principal, Gracias sourced investments in nine middle market manufacturing
22 companies where MG Capital played the role of lead equity sponsor. In addition, Gracias served
23 as Chief Executive Officer of Industrial Powder Coatings, Inc., a \$65 million revenue supplier to
24 the auto parts and appliance sectors. Prior to MG Capital, Gracias was an Associate with
25 Goldman, Sachs & Co. in New York where he served the firm’s institutional clients in the
26 International Equity Division. Gracias is a member of the Commercial Club of Chicago, a
27

1 member of the Board of Directors of the Grand Victoria Foundation, a member of the Board of
2 Trustees of the Illinois Institute of Technology, a member of the Board of Directors of The
3 Economic Club of Chicago, a Trustee of the Field Museum, and a member of the Board of
4 Visitors of the University of Chicago Law School. Upon information and belief, Gracias is a
5 citizen of Illinois.

6 29. Defendant Steve Jurvetson (“Jurvetson”) is and has been since 2009, a director of
7 Tesla. Jurvetson is also a member of the Company’s Audit Committee. Jurvetson is a managing
8 director of Draper Fisher Jurvetson, a venture capital firm and one of the most active energy and
9 clean tech investors, with affiliate offices around the world and \$6 billion under management.
10 Jurvetson was the founding venture investor in Hotmail, Interwoven and Kana. He also led the
11 firm’s investments in Tradex and Cyras. Previously, he was an R&D engineer at Hewlett-
12 Packard, where seven of his communications chip designs were fabricated. His prior technical
13 experience also includes programming, materials science research and computer design at HP,
14 the Center for Materials Research, and Mostek. He has also worked in product marketing at
15 Apple and NeXT. Upon information and belief, Jurvetson is a citizen of California.

16 30. Defendant Harald Kroeger (“Kroeger”) was a director of Tesla from 2012 until
17 June 3, 2014. Kroeger is responsible for development of electrics and electronics of all
18 Mercedes-Benz cars. In addition, as a vice president within Mercedes, he is the head of
19 development for electric vehicles, electric motors, high voltage batteries and power electronics.
20 Before this assignment, Kroeger was head of quality management for Mercedes-Benz, managing
21 quality in product design, product development, manufacturing, sales and after sales, as well as
22 overall supplier quality management. Kroeger started his career with Daimler-Benz in 1995 in
23 research and development, working on radar technologies for vehicles. After assignments in
24 different Mercedes plants in South Africa and Germany, Kroeger was named as head of
25 purchasing for electrics and electronics, with responsibility for more than \$5 billion worth of
26 purchased material, as well as managing the global purchasing alliance with Chrysler and
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1 Mitsubishi for all E/E components. Before joining Mercedes, Kroeger worked for Philips AG in
2 1993 in research on electric motors, holding patents on foil motors. Upon information and
3 belief, Kroeger is a citizen of California.

4 31. Defendant Kimbal Musk (“K. Musk”) is and has been since 2004, a director of
5 Tesla and is the brother of defendant E. Musk. K. Musk is also CEO of Medium, Inc., an
6 internet software company based in Boulder, Colorado. K. Musk and his brother, E. Musk,
7 started their first company, Zip2, an early content management company for the Internet, in
8 1995. It was the first company to bring vector-based maps and door-to-door directions to the
9 internet, and it built the online content management systems behind more than 100 media
10 companies, including *The New York Times*. Zip2 was sold for \$307 million in cash in 1999, one
11 of the largest transactions of its kind in the internet industry at the time. Since then, K. Musk has
12 helped found, advised, and invested in several young companies. His prior and current board
13 seats, in addition to Tesla Motors, are Medium, Inc., Everdream Corp., BlackBook Media,
14 SpaceX Corp., and ProgressNow.org. Upon information and belief, K. Musk is a citizen of
15 Colorado.

16 32. The defendants identified in ¶¶ 25 to 31 are referred to herein as the “Individual
17 Defendants.”

18 **DUTIES OF THE INDIVIDUAL DEFENDANTS**

19 33. By reason of their positions as officers, directors and/or fiduciaries of Tesla and
20 because of their ability to control the business and corporate affairs of the Company, the
21 Individual Defendants owed Tesla and its shareholders fiduciary obligations of trust, loyalty,
22 good faith and due care, and were and are required to use their utmost ability to control and
23 manage Tesla in a fair, just, honest and equitable manner. The Individual Defendants were and
24 are required to act in furtherance of the best interests of Tesla and its shareholders so as to
25 benefit all shareholders equally and not in furtherance of their personal interest or benefit.

1 34. Each director and officer of the Company also owes to Tesla and its shareholders
2 the fiduciary duty to exercise good faith and diligence in the administration of the affairs of the
3 Company and in the use and preservation of its property and assets, and the highest obligations
4 of fair dealing.

5 35. The Individual Defendants, because of their positions of control and authority as
6 directors and/or officers of Tesla, were able to and did, directly and/or indirectly, exercise
7 control over the wrongful acts complained of herein. Because of their advisory, executive,
8 managerial and directorial positions with Tesla, each of the Individual Defendants had access to
9 adverse non public information about the financial condition, operations, and improper practices
10 of Tesla.

11 36. At all times relevant hereto, each of the Individual Defendants was the agent of
12 each of the other Individual Defendants and of Tesla, and was at all times acting within the
13 course and scope of such agency.

14 37. To discharge their duties, the officers and directors of Tesla were required to
15 exercise reasonable and prudent supervision over the management, policies, practices and
16 controls of the affairs of the Company. By virtue of such duties, the officers and directors of
17 Tesla were required to, among other things:

18 (a) refrain from acting upon material inside corporate information to benefit
19 themselves;

20 (b) ensure that the Company complied with its legal obligations and
21 requirements, including acting only within the scope of its legal authority and disseminating
22 truthful and accurate statements;

23 (c) conduct the affairs of the Company in an efficient, business like manner so
24 as to make it possible to provide the highest quality performance of its business, to avoid wasting
25 the Company's assets, and to maximize the value of the Company's stock;

1 (d) remain informed as to how Tesla conducted its operations, and, upon
2 receipt of notice or information of imprudent or unsound conditions or practices, to make
3 reasonable inquiry in connection therewith, and to take steps to correct such conditions or
4 practices and make such disclosures as necessary to comply with applicable laws; and

5 (e) ensure that the Company was operated in a diligent, honest and prudent
6 manner in compliance with all applicable laws, rules and regulations.

7 38. The conduct of the Individual Defendants complained of herein involves a
8 knowing and culpable violation of their obligations as directors and/or officers of Tesla, the
9 absence of good faith on their part, and a reckless disregard for their duties to the Company and
10 its shareholders that the Individual Defendants were aware or should have been aware posed a
11 risk of serious injury to the Company. The conduct of the Individual Defendants who were also
12 officers and/or directors of the Company during the relevant time period has been ratified by the
13 remaining Individual Defendants who collectively comprised all of Tesla's Board during the
14 relevant time period.

15 39. The Individual Defendants breached their duties of loyalty and good faith by
16 allowing defendants to cause, or by themselves causing, the Company to misrepresent its
17 business, operations and prospects as detailed herein, by failing to properly oversee the
18 Company's business and operations, and by failing to prevent the Individual Defendants from
19 taking such illegal actions.

20 **CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION**

21 40. The Individual Defendants engaged in a conspiracy, common enterprise and/or
22 common course of conduct by causing the Company to conceal the true facts as alleged herein.

23 41. The purpose and effect of the conspiracy, common enterprise, and/or common
24 course of conduct was, among other things, to disguise the Individual Defendants' violations of
25 law and breaches of fiduciary, to conceal adverse information concerning the Company's
26 operations, financial condition and future business prospects, and to artificially inflate the price
27

1 of Tesla common stock so the Individual Defendants could protect and enhance their executive
2 and directorial positions and the substantial compensation and prestige they obtained as a result
3 thereof.

4 42. The Individual Defendants accomplished their conspiracy, common enterprise
5 and/or common course of conduct by causing the Company to purposefully, recklessly or
6 negligently fail to maintain effective internal control policies and procedures with respect to the
7 Company's public statements to its shareholders and the investing community. Because the
8 actions described herein occurred under the authority of the Board, each of the Individual
9 Defendants was a direct, necessary and substantial participant in the conspiracy, common
10 enterprise and/or common course of conduct complained of herein.

11 43. Each of the Individual Defendants aided and abetted and rendered substantial
12 assistance in the wrongs complained of herein. In taking such actions to substantially assist the
13 commission of the wrongdoing complained of herein, each of the Individual Defendants acted
14 with knowledge of the primary wrongdoing, substantially assisted the accomplishment of that
15 wrongdoing, and was aware of his or her overall contribution to and furtherance of the
16 wrongdoing.

17 44. At all times relevant hereto, each of the Individual Defendants was the agent of
18 each of the other Individual Defendants and of Tesla, and was at all times acting within the
19 course and scope of such agency.

20 **FACTUAL ALLEGATIONS**

21 **Tesla's Operational Problems**

22 45. Tesla was formed by Silicon Valley entrepreneurs in 2003 with the goal of
23 developing, marketing and selling fully electric automobiles. By October 2008, Tesla was
24 controlled by defendant E. Musk, who, despite having no prior background in the automobile
25 industry, added the title CEO to his titles of Chairman and "Product Architect."

1 46. Tesla designs, manufactures, markets, and thus far has sold, just two fully electric
2 vehicles – the Roadster and the Model S. In addition, it designs, manufactures and sells electric
3 vehicle powertrain components to more traditional automobile manufactures for use in their own
4 electric fleets.

5 47. Tesla acknowledges that its proprietary electric vehicle powertrain system is the
6 foundation of its entire business. *See* Form 10-K for the period ended December 31, 2012. This
7 system was developed for the Roadster, modified for the Model S, and will be used in Tesla's
8 future electric vehicles, including the Model X. Given its importance to Tesla's business, the
9 Individual Defendants knew that any material defect or critical vulnerability to this electric
10 powertrain system, if exposed, would pose a massive threat to Tesla's reputation and business
11 prospects.

12 48. During the period from 2008-2012, Tesla sold only 2,500 Roadsters. From June
13 2012 through August 7, 2013, Tesla had only sold about 13,000 of its Model S vehicles. By
14 August 2013, Tesla had never reported a net profit on its audited GAAP financial statements and
15 it was incumbent upon the Company to ramp up sales of the Model S – its *only* product available
16 for sale.

17 49. However, at the time and undisclosed to investors, Tesla was experiencing
18 numerous operational problems. It has been alleged in the Federal Securities Action that many of
19 these problems were caused in large part by defendant E. Musk's edicts regarding stringent
20 design and production deadlines which in turn caused Tesla employees to operate at a frenetic
21 pace and to make critical errors, compromising the Model S's safety. According to confidential
22 witness reports as set forth in the Federal Securities Action, Tesla was struggling to obtain
23 sufficient parts to build cars, thereby forcing the Company to use preliminary parts in Model S
24 cars sold to the public and parts that had not undergone sufficient validation tests to ascertain
25 performance through the life of the vehicle.

1 50. Other confidential witnesses allegedly reported that defendant E. Musk, despite
2 lacking any advanced engineering degree, was heavily involved in the development of the Model
3 S and made major decisions about its engineering and design, sometimes rejecting the
4 recommendations of Tesla's own engineers. Notably, one confidential witness allegedly
5 described in detail how defendant E. Musk's mandate for a 300 mile per battery charge range for
6 the Model S, required Tesla's engineers to use higher-energy batteries. Although these batteries
7 would reach E. Musk's stated 300-mile range, they were more volatile and could lead to bigger
8 and more violent thermal events.

9 51. Nevertheless, and even with knowledge of the inherent risks of placing these
10 batteries along the bottom of the Model S just inches above the road, the Company, with E.
11 Musk at the helm, made the decision to reject available technologies and approaches that would
12 have increased the durability of the Model S's undercarriage and increased the fire protection for
13 its battery pack.

14 52. For example, Tesla discontinued use of individual sleeves for the Model S's
15 batteries, a technology that had been employed in the Roadster. Further, Tesla opted essentially
16 to preserve its pre-existing battery pack design and configuration, even after it opted to use
17 higher-energy batteries. Moreover, Tesla did not implement stronger undercarriage plating that
18 was available for inclusion in the Model S. Finally, Tesla designed and programmed the Model
19 S to automatically lower its own driving height once the vehicle reached 55 miles per hour, in an
20 effort to reduce drag and increase the mileage range. The obvious consequence of lowering the
21 car is that there is an increased likelihood of road debris hitting the undercarriage which could
22 damage the battery and cause a fire.

23 53. Confidential witnesses interviewed in the Federal Securities Action allegedly
24 described a series of significant battery fire incidents, planned and unplanned, during design and
25 pre-production of the Model S which leave no doubt that the Individual Defendants were fully
26 aware of the risk associated with battery fires in the Model S. The first fire purportedly occurred
27

1 in or about September or October 2011 during the build-out of a prototype Model S. The second
2 fire incident reportedly occurred in late 2011 during a test to determine the outcome if a battery
3 pack went into a thermal event and began to burn. The fire department's incident report, as
4 described in the Federal Securities Action, noted that the fire resulted from a Tesla test on the
5 battery packs during a crash fire test, stating: "They intentionally set the vehicle on fire inside a
6 testing building and the fire became larger than they could handle." Another fire incident was
7 reported as having occurred on January 11, 2012 at Tesla's headquarters in Palo Alto. The fire
8 department's report, as identified in the Federal Securities Action, suggests that the fire was
9 spontaneous and that Tesla batteries were involved. *None* of these incidents were disclosed in
10 any Form 8-K or press release, nor did Tesla's Form 10-K for the period ended December 31,
11 2011, which was filed on February 27, 2012, describe any of these fires.

12 54. Eventually, Tesla was forced to adopt retroactive measures to remedy the
13 undercarriage and driving height issues by lifting the Model S's height at highway speeds and by
14 retrofitting already-sold Model S cars with a titanium undercarriage shield.

15 **The NHTSA's Testing of the Model S did Not Assess the Risk of**
16 **Battery Fires Caused by Undercarriage Puncture**

17 55. The NHTSA's 5-Star Safety Ratings Program employs only limited testing
18 to generate comparative safety ratings among vehicles. Specifically, the NHTSA performs
19 the following crash tests (in addition to rating the rollover resistance of vehicles):

20 (a) Frontal crash test. NHTSA performs a frontal crash test, in which a vehicle is
21 crashed into a fixed barrier at thirty-five (35) miles per hour. The test utilizes instruments
22 to measure the impact to various parts of the bodies of two crash test dummies seat belted
23 in the car.

24 (b) Side barrier crash test. In this test, a barrier moving thirty-eight and one-half
25 (38.5) miles per hour is crashed into the side of a vehicle standing still. The test utilizes
26 instruments to measure the impact to various parts of the bodies of two crash test
27 dummies seat belted in the car.

1 (c) Side pole crash test. This test involves a car being angled at 75 degrees and then
2 pulled sideways at twenty (20) miles per hour into a 25-centimeter pole at the driver's
3 seat location. The test utilizes instruments to measure the impact to various parts of the
4 bodies of one crash test dummy belted in the driver's seat.

5 56. None of these tests assess the fire risk posed by the battery pack of an electric car
6 under any conditions. They do not measure the structural integrity of or damage caused to the
7 battery pack of an electric vehicle as a result of the impacts simulated. They do not evaluate or
8 measure damage to the vehicle as a result of the impacts simulated. They do not evaluate or
9 measure damage to the vehicle or its undercarriage or its protective shield caused by impact with
10 road debris. Nor do these tests generate any data based on a vehicle travelling at highway
11 speeds. Moreover, the NHTSA's fire prevention regulations do not apply to electric cars in that
12 they are written to minimize the amount of gas spilled in a fuel-tank rupture.

13 57. It was in or about early to mid August 2013 that the NHTSA notified Tesla of the
14 Model S's test results.

15 **The Individual Defendants Cause or Allow the Company to Issue**
16 **False and Misleading Statements**

17 58. As detailed herein, this action arises from the Individuals Defendants' failure to
18 maintain effective internal control policies and procedures with respect to the Company's public
19 statements to its shareholders and the investing community. In particular, the Individual
20 Defendants caused or allowed the Company to misrepresent: (a) the safety rating of one of its
21 two automobiles, the Model S; (b) that Tesla had conducted independent testing that verified that
22 the weakest points on the Model S were five-star safe; (c) the Model S's history of fires and
23 numerous incidents involving fire; and (d) that the Model S's battery pack contributed to its
24 safety while omitting to disclose its significant vulnerabilities to road debris impact, puncture,
25 and catastrophic fire during normal driving conditions due to its undercarriage design and
26 configuration, its lack of protective battery sleeves, its lack of reinforced undercarriage plating,
27 and its lowered driving height at highway speeds. The Individual Defendants also caused or

1 allowed the Company to omit to disclose that Tesla's stock price faced considerable risk as a
2 result of the material misstatements and omissions.

3 59. On August 19, 2013, after the markets closed, the Individual Defendants caused
4 or allowed Tesla to issue a press release (the "August 19, 2013 Press Release,") in which it
5 touted the Model S's NHTSA test results. The August 19, 2013 Press Release was intended to
6 serve the dual purpose of establishing proof-of-concept for its all-electric Model S and of
7 increasing sales of the Model S in light of declining ZEV revenues and tapped-out capital and
8 debt market financing. However, the August 19, 2013 Press Release contained numerous
9 materially false and misleading statements and material omissions.

10 60. First, the August 19, 2013 Press Release falsely stated, in its title, that the "Tesla
11 Model S Achieves Best Safety Rating Of Any Car Ever Tested." This was materially false
12 because, as described below, the NHTSA does not further rank cars among all those that earned
13 the 5-star category.

14 61. Second, the August 19, 2013 Press Release falsely stated, "[S]afety levels better
15 than 5 stars are captured in the overall Vehicle Safety Score (VSS) provided to manufacturers,
16 where the Model S achieved a new combined record of 5.4 stars." This was materially false
17 because, as described below, the NHTSA does not rate any car above 5 stars.

18 62. Third, the August 19, 2013 Press Release falsely touted the location and low
19 height of the Model S battery pack as enhancing the vehicle's safety. Specifically, in touting the
20 Model S's rollover test results, it stated, "The reason for such a good outcome is that the battery
21 pack is mounted below the floor pan, providing a very low center of gravity, which
22 simultaneously ensures exceptional handling and safety."

23 63. Fourth, the August 19, 2013 Press Release expressly represented that Tesla had
24 redundantly tested the Model S to determine its weakest points and to improve them all so that
25 no part of the vehicle would score under 5 stars in a safety rating. Such a broad, blanket
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1 statement necessarily encompassed the undercarriage, the battery pack, and the parts of the car
2 encasing and protecting the battery pack. Specifically, this press release stated:

3 The above results do not tell the full story. It is possible to game the regulatory
4 testing score to some degree by strengthening a car at the exact locations used by
5 the regulatory testing machines. After verifying through internal testing that the
6 Model S would achieve a NHTSA 5-star rating, Tesla then analyzed the Model S
to determine the weakest points in the car and retested at those locations until the
car achieved 5 stars no matter how the test equipment was configured.

7 64. In other words, Tesla claimed to have vigorously examined the Model S to
8 identify its “weakest points” and did not stop testing until they had *all* achieved a perfect 5-star
9 score. However, by failing to exclude the undercarriage, the battery pack, and the parts of
10 the car encasing and protecting the battery pack, Tesla falsely stated that those parts, too, had
11 achieved the performance levels of a perfect 5-star score.

12 65. Fifth, the August 19, 2013 press release also made specific false and misleading
13 representations as to the safety and reliability of the Model S’s battery pack, stating:

14 The Model S lithium-ion battery did not catch fire at any time before, during, or
15 after NHTSA testing. It is worth mentioning that no production Tesla lithium-ion
battery has ever caught fire in the Model S or Roadster, despite several high speed
impacts.

16 66. The first sentence is patently false. The Model S battery pack caught fire
17 numerous times before the NHTSA testing, including three significant blazes that required first
18 responder intervention, as discussed above. Contemporaneous incident reports prepared by
19 responding fire departments specifically describe the fire as occurring in the Model S battery
20 pack. The second sentence is an extremely misleading statement - by qualifying itself as
21 speaking only to “production” batteries, this statement is subtly hedged so as to exclude the three
22 test battery fires discussed above in a way that would be impossible for an investor to
23 independently discover.

24 67. In addition to the foregoing, all five of the above-described statements in the
25 August 19, 2013 Press Release were materially false and misleading for the additional reasons
26 that they failed to disclose the following material information: (a) Tesla’s numerous prior
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1 battery fire incidents (as discussed *supra*); (b) the fact that the Model S was highly vulnerable to
2 undercarriage puncture and catastrophic fire during normal driving conditions due to its
3 undercarriage design and configuration, its lack of protective battery sleeves, its lack of
4 reinforced undercarriage plating, and its lowered driving height at highway speeds; and (c) that
5 Tesla's stock price was at significant risk due to the foregoing material misstatements and
6 omissions.

7 68. On or about the same time that the August 19, 2013 Press Release was
8 disseminated to the investing public, the Individual Defendants caused or allowed Tesla to revise
9 its corporate website so that the front page displayed the description, "The Safest Car In
10 America" in touting its NHTSA ratings. As explained herein, the NHTSA's rating system does
11 not rank cars within the 5-star category, and the NHTSA does not actually test many of the
12 Model S's direct luxury-car competitors, such as the Audi A8, the BMW 7 series, and the
13 Mercedes-Benz S-class, all of which are loaded with safety-enhancing features. Moreover,
14 characterization of the Model S as the "Safest Car In America" is particularly misleading in light
15 of its history of battery fire incidents and the fact that it was highly vulnerable to undercarriage
16 puncture and catastrophic fire due to its undercarriage design and configuration.

17 69. On August 20, 2013, defendant E. Musk was interviewed by Yahoo! Autos and
18 the automobile blog Motoramic, during which he discussed the Model S, its battery pack design,
19 its testing results, and its safety record. During this interview, the Individual Defendants caused
20 or allowed defendant E. Musk to make additional materially false and misleading statements,
21 unaccompanied by any warnings or cautionary statements. Specifically, in addressing statements
22 in the August 19, 2013 Press Release that the Model S battery pack had no issues before, during
23 or after crash testing, and in light of concerns over lithium-ion battery packs after the grounding
24 of Boeing's 787 airliner, defendant E. Musk stated, "Throughout all our crash tests, throughout
25 all similar incidents with vehicles on the road, never once has there been a fire." This statement
26 was untrue. Tesla's batteries had caught fire numerous times before, including three significant
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1 events requiring first responder intervention, one of which occurred during Tesla's own crash
2 testing of the Model S.

3 70. In a September 14, 2013 "Tesla Motors Investor Presentation" bearing a Tesla
4 copyright and the name of Jeff Evanson, Tesla's VP of Investor Relations (the "September 14,
5 2013 Investor Presentation"), Tesla again falsely touted the Model S as being the "Safest Car
6 Ever Tested by NHTSA."

7 71. In addition, this statement, as well as the September 14, 2013 Investor
8 Presentation's discussion of the Model S's "passive safety features" and "high energy
9 density" were also materially false and misleading because they failed to disclose Tesla's
10 numerous prior battery fire incidents, some of which had occurred during Tesla's crash testing of
11 the Model S, and the fact that the Model S was highly vulnerable to undercarriage puncture and
12 catastrophic fire during normal driving conditions due to its undercarriage design and
13 configuration.

14 72. On October 3, 2013, the campaign of misinformation continued under the
15 Individual Defendants' watch. On that day, a Tesla spokesperson, Elizabeth Jarvis-Shean, was
16 quoted by ABC News as stating that a Model S fire in the state of Washington on October 1,
17 2013, was the first known fire caused by a Model S battery. News reports carried the story on
18 the fire along with imagery of a Model S smoldering on the shoulder of a major highway. In her
19 interview, she stated, "[T]his is the first fire." This statement was untrue because the Model S
20 batteries had previously caught fire on numerous occasions. In spite of their attempt to
21 downplay the fire as an isolated "first time event," the market reacted strongly to news of the
22 Washington state fire and Tesla's stock plummeted 6% or \$12.50 per share to close at \$180 per
23 share on October 2, 2013, on volume of 20,724,600 shares.

24 73. The next day, on October 3, 2013, *The New York Times* published an article
25 entitled "Car Fire a Test for High-Flying Tesla," which quoted a battery consultant as saying that
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1 the case shielding around the Model S's lithium-ion battery might not have been strong enough
2 to keep the impact with road debris from causing a short circuit.

3 74. The *MIT Technology Review* also published an article that day entitled "What
4 Tesla Battery Fire Means for Electric Vehicles," which also raised concerns about the Model S's
5 battery pack.

6 75. Tesla's stock price continued to be battered by these reports, dropping \$7.64 per
7 share or 4.2% to close at \$173.31 per share on October 3, 2012.

8 76. Then, on October 4, 2013, defendant E. Musk authored a blog post published on
9 Tesla's website which was linked to Tesla's Twitter account and to defendant E. Musk's
10 personal Twitter account the same day. He characterized the Washington state fire incident as
11 one that was the result of an unusually strong force penetrating the undercarriage: "The geometry
12 of the object caused a powerful lever action as it went under the car, punching upward and
13 impaling the Model S with a peak force on the order of 25 tons. Only a force of this magnitude
14 would be strong enough to punch a 3 inch diameter hole through the quarter inch armor plate
15 protecting the base of the vehicle." Defendant E. Musk also touted the Model S's safety
16 compared to traditional gasoline-powered automobiles under similar circumstances: "Had a
17 conventional gasoline car encountered the same object on the highway, the result could have
18 been far worse. . . . [T]he effective combustion potential is only about 1% that of the fuel in a
19 comparable gasoline sedan. . . . [Y]ou are 5 times more likely to experience a fire in a
20 conventional gasoline car than a Tesla." E. Musk went so far as to even allocate blame for the
21 intensity of the fire to first responders who observed standard operating procedures in
22 extinguishing the fire: "For the Model S Lithium-ion battery, it was correct to apply water (vs.
23 dry chemical extinguisher), but not to puncture the metal firewall, as the newly created holes
24 allowed the flames to vent upwards into the front trunk section of the Model S."

25 77. In the blog post, defendant E. Musk also published an email exchange with the
26 driver of the Model S that burned where he described the metal object that punctured the
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1 vehicle's undercarriage as a "highly uncommon occurrence" and "something that is extremely
2 hard to do."

3 78. As described herein *supra*, these statements were contrary to known facts about
4 the weakness of the Model S undercarriage and battery pack and to Tesla's undisclosed prior
5 battery fires.

6 79. On October 22, 2013, the NHTSA issued a statement that, while it had not yet
7 decided whether to open a formal investigation, the agency was "gathering data" and had its
8 experts in contact with Tesla.

9 80. Even the threat of a costly formal investigation by the NHTSA did not cause the
10 Individual Defendants to quell statements regarding Model S safety, nor did it cause them to rein
11 in defendant E. Musk who continued to make blatantly false representations about the fire
12 incident in Washington state in particular and, more generally, about the Model's S's risk of fire.

13 81. On October 22, 2013, defendant E. Musk gave a speech to Tesla consumers at a
14 Tesla service center in Germany which was videotaped and widely disseminated on the Internet.
15 During the speech he repeated many of the same statements made in his October 4 blog post,
16 including, among other things, that the Washington state fire was a "very peculiar accident" and
17 that Tesla's electric car "is five times less likely to catch fire than a gasoline car." Similar
18 comments were made by E. Musk during an October 24, 2013 interview on Bloomberg TV.

19 82. Notably, while the Individual Defendants continued to allow the Company to
20 falsely praise the safety of its Model S, unbeknownst to investors, a second Model S fire had
21 taken place. Indeed, on October 28, 2013, media outlets reported that a second Tesla Model S
22 fire had occurred on October 18, 2013 in Merida, Yucatan Peninsula, Mexico. Once again, video
23 was circulated of a Model S engulfed in flames punctuated by sporadic explosions. On this
24 news, Tesla's stock price dropped \$7.32 or 4.3% on heavy volume to close at \$162.86 on
25 October 28, 2013.

1 83. There is no question that the Individual Defendants would have been aware of the
2 second Model S fire. According to a confidential witness as alleged in the Federal Securities
3 Action, Tesla sent a team of approximately five engineers and technicians on October 21, 2013,
4 which team conducted an on-site investigation for two days.

5 84. Disaster once again struck when on November 6, 2013, a Model S operating
6 under normal driving conditions struck road debris and incinerated. During the morning of
7 November 7, 2013, Tesla confirmed that a third fire in its Model S had occurred, this time in
8 Murfreesboro, Tennessee, the previous afternoon, and that Tesla had already sent a team to
9 Tennessee to investigate. This was Tesla's third Model S fire in just five weeks.

10 85. According to local authorities, the Model S in question was driving under normal
11 conditions when it hit a metal object on the roadway, thought to be a tow hitch. The object
12 damaged the car's undercarriage and ignited a fire in the battery pack. The blaze was hot and
13 intense and according to eye witness reports, virtually melted the vehicle to the road.

14 86. Media outlets widely reported the story and Tesla's stock was pummeled again,
15 closing at \$139.77, down from its prior day's closing price of \$151.16, on heavy volume.

16 87. The Individual Defendants, however, buried their heads in the sand and allowed
17 the campaign of misinformation to continue.

18 88. On November 12, 2013, the Individual Defendants caused or allowed defendant
19 E. Musk, in an interview with CNBC, to make additional false and misleading statements. After
20 three publicly-known fires in the prior six weeks, and the other undisclosed fires, E. Musk still
21 maintained that the Model S is less likely to have a fire than a gasoline car. He repeated such
22 statements in interviews that day at the second annual DealBook conference hosted by *The New*
23 *York Times* and at the Ignition: Future Digital Conference in New York. The Individual
24 Defendants also caused or allowed E. Musk to deny that there was any reason for a Model S
25 recall, a statement that is wholly false in that Tesla was in fact on the cusp of taking corrective
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1 actions, including the raising of the Model S by an over-the-air software update and the
2 retroactive implementation of enhanced undercarriage shielding.

3 89. Notably, on November 18, 2013, the Company revealed that it was taking
4 corrective measures to address the problem of Model S fires under normal driving conditions at
5 highway speeds:

6 While we believe the evidence is clear that there is no safer car on the road than
7 the Model S, we are taking three specific actions.

8 First, we have rolled out an over-the-air update to the air suspension that will
9 result in greater ground clearance at highway speeds. To be clear, this is about
10 reducing the chances of underbody impact damage, not improving safety. The
11 theoretical probability of a fire injury is already vanishingly small and the actual
number to date is zero. Another software update expected in January will
give the driver direct control of the air suspension ride height transitions.

12 Second, we have requested that the National Highway Traffic Safety
13 Administration conduct a full investigation as soon as possible into the fire
14 incidents. While we think it is highly unlikely, if something is discovered
15 that would result in a material improvement in occupant fire safety, we will
16 immediately apply that change to new cars and offer it as a free retrofit to all
17 existing cars. Given that the incidence of fires in the Model S is far lower than
18 combustion cars and that there have been no resulting injuries, this did not at first
19 seem like a good use of NHTSA's time compared to the hundreds of gasoline
fire deaths per year that warrant their attention. However, there is a larger issue
at stake: if a false perception about the safety of electric cars is allowed to
linger, it will delay the advent of sustainable transport and increase the risk of
global climate change, with potentially disastrous consequences worldwide.
That cannot be allowed to happen.

20 Third, to reinforce how strongly we feel about the low risk of fire in our cars, we
21 will be amending our warranty policy to cover damage due to a fire, even if due
22 to driver error. Unless a Model S owner actively tries to destroy the car, they are
23 covered. Our goal here is to eliminate any concern about the cost of such an
24 event and ensure that over time the Model S has the lowest insurance cost of
any car at our price point. Either our belief in the safety of our car is correct
and this is a minor cost or we are wrong, in which case the right thing is for
Tesla to bear the cost rather than the car buyer.

25 All of these actions are taken in order to make clear the confidence we have in
26 our product and to eliminate any misperceptions regarding the integrity of our
27 technology and the safety of our cars.

DAMAGES TO THE COMPANY

90. As a result of the Individual Defendants' improprieties, the Company has suffered, and continues to suffer, extensive damage.

91. Tesla has expended and will continue to expend significant sums of money that it otherwise would not have spent. Such expenditures include, but are not limited to:

- a) costs incurred in investigating and defending Tesla and certain officers in the Federal Securities Action, plus potentially millions of dollars in settlements or to satisfy an adverse judgment;
- b) costs incurred from compensation and benefits paid to the Individual Defendants, which compensation was based at least in part on Tesla's artificially inflated stock price; and
- c) costs incurred from the loss of the Company's customers' confidence in Tesla's services.

92. As a result of the Individual Defendants' misconduct, Tesla's corporate image and goodwill have also been irreparably damaged.

DEMAND IS FUTILE

93. Plaintiff incorporates by reference and realleges each and every allegation stated above as if fully set forth herein. Presently, the Board consists of the following six individuals: E. Musk, Buss, Ehrenpreis, Gracias, Jurvetson, and K. Musk. Plaintiff did not make a demand on the Board to bring this action because such demand would be futile given the facts as alleged herein and, therefore, such a demand is excused.

94. As specified herein, demand is excused because this Verified Shareholder Derivative Complaint alleges with particularity that at least half of the members of the current Board breached their fiduciary duties of care, loyalty, reasonable inquiry, oversight, good faith and supervision. Indeed, during the relevant period the Individual Defendants caused or allowed the Company to fail to maintain proper internal controls and oversight mechanisms and to issue

1 false and misleading statements regarding the safety of its only vehicle for sale – the Model S.
2 The Individual Defendants’ misconduct has severely damaged the Company. Lawsuits alleging
3 violation of the federal securities laws have been filed against the Company. Further, and more
4 importantly, Tesla’s reputation and goodwill have been tainted by the misconduct described
5 herein.

6 95. During the relevant period, the Audit Committee consisted of defendants Buss,
7 Gracias and Jurveston, with defendant Buss the designated Audit Committee Financial Expert.
8 Among other things, the Audit Committee is responsible for “reviewing the adequacy and
9 effectiveness of Tesla’s internal control policies and procedures”

10 96. According to the Company’s website, the Board:

11 ...sets high standards for the Company’s employees, officers and directors.
12 Implicit in this philosophy is the importance of sound corporate governance. It is
13 the duty of the Board of Directors to serve as a prudent fiduciary for shareholders
14 and to oversee the management of the Company’s business. To fulfill its
15 responsibilities and to discharge its duty, the Board of Directors follows the
16 procedures and standards that are set forth in these guidelines. These guidelines
are subject to modification from time to time as the Board of Directors deems
appropriate in the best interests of the Company or as required by applicable laws
and regulations.

17 97. In addition, by its Code of Ethics:

18 Each employee, officer and director should endeavor to respect the rights of and
19 deal fairly with the Company’s customers, suppliers, competitors and employees.
20 No employee, officer or director should take unfair advantage of anyone through
manipulation, concealment, abuse of privileged information, misrepresentation of
material facts, or any other intentional unfair-dealing practice.

21 98. In this vein, the Code of Ethics sets further specific policies as to the CEO:

22 The CEO and all senior financial officers are responsible for full, fair, accurate,
23 timely and understandable disclosure in the periodic reports required to be filed
24 by the Company with the SEC. Accordingly, it is the responsibility of the CEO
25 and each senior financial officer promptly to bring to the attention of the
26 Disclosure Committee any material information of which he or she may become
aware that affects the disclosures made by the Company in its public filings or
otherwise assist the Disclosure Committee in fulfilling its responsibilities as
specified in the Company’s Disclosure Controls and Procedures Policy.

The CEO and each senior financial officer shall promptly bring to the attention of the General Counsel or the Legal Department or the CEO and to the Audit Committee any information he or she may have concerning evidence of a material violation of the securities or other laws, rules or regulations applicable to the Company and the operation of its business, by the Company or any agent thereof, or of violation of the Code of Business Conduct and Ethics or of these additional procedures.

99. Furthermore, the Company's policies with respect to external reporting and disclosure require the Audit Committee to review external reports (defined as SEC Forms 8-K, 10-Q, 10-K, Annual Meeting Materials, Quarterly Earnings Releases and Guidance, Investor and Other Presentations, and Routine Press Releases) prepared by the executive-level Disclosure Committee.

100. The Board is also responsible for overseeing the major risks facing the Company:

The Board of Directors is responsible for overseeing the major risks facing the Company while management is responsible for assessing and mitigating the Company's risks on a day-to-day basis. In addition, the Board has delegated oversight of certain categories of risk to the Audit and Compensation Committees. The Audit Committee reviews and discusses with management significant financial and nonfinancial risk exposures and the steps management has taken to monitor, control and report such exposures. The Compensation Committee oversees management of risks relating to the Company's compensation plans and programs. In performing their oversight responsibilities, the Board and Audit Committee periodically discuss with management the Company's policies with respect to risk assessment and risk management. The Audit and Compensation Committees report to the Board as appropriate on matters that involve specific areas of risk that each Committee oversees.

101. Despite their duties and responsibilities, the members of the Board and/or Audit Committee respectively, failed to ensure that the Company had adequate internal controls, policies and oversight mechanisms in place to prevent the wrongdoing alleged herein. As such, the Individual Defendants face a substantial threat of liability and cannot fairly consider a demand to commence litigation.

102. The Individual Defendants' conduct described herein and summarized above could not have been the product of legitimate business judgment as it was based on intentional,

1 reckless and disloyal misconduct. Thus, none of the Individual Defendants can claim
2 exculpation from their violations of duty pursuant to the Company's charter (to the extent such a
3 provision exists). As a majority of the Individual Defendants face a substantial likelihood of
4 liability, they are self-interested in the transactions challenged herein and cannot be presumed to
5 be capable of exercising independent and disinterested judgment about whether to pursue this
6 action on behalf of the shareholders of the Company. Accordingly, demand is excused as being
7 futile.

8 103. Read together with the facts summarized above and alleged with particularity
9 herein, pre-suit demand is also excused as futile for the following reasons:

10 (a) The principal professional occupation of defendant E. Musk is his
11 employment with Tesla, pursuant to which he received and continues to receive substantial
12 monetary compensation and other benefits. In 2012, in particular, E. Musk was paid salary,
13 bonus, stock awards and stock options totaling \$78,150,010. Furthermore, the Company admits
14 that E. Musk is not independent in its Proxy Statement filed April 24, 2014. E. Musk owns 27%
15 of the Company's shares.

16 (b) The Individual Defendants concede that defendant K. Musk lacks
17 independence as he is the brother of E. Musk. The familial relationship renders demand futile as
18 to defendants E. Musk and K. Musk.

19 (c) Defendant Gracias lacks independence as he is the chief executive officer
20 and a director of Valor Management Corp. ("VMC") which is a minority investor of Space X
21 where Gracias is a director and defendant E. Musk is the Chief Executive Officer, Chief
22 Technology Officer, Chairman and a significant stockholder. Moreover, VMC is a minority
23 investor in SolarCity where Gracias is also a director and of which E. Musk is the Chairman.
24 Furthermore, The Elon Musk Revocable Trust dated July 22, 2003, is a limited partner of Valor
25 Equity Partners, L.P., Valor Equity Partners II, L.P. and Valor Equity Partners III-A L.P., which
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are advised by VMC, with subscription commitments of \$2 million, \$2 million and \$10 million, respectively.

(d) Defendant Jurvetson lacks independence as he is a managing director of Draper Fisher Jurvetson ("DFJ"). DFJ funds are a significant stockholder of SpaceX and Jurvetson is a director of SpaceX. As discussed *supra*, defendant E. Musk is the Chief Executive Officer, Chief Technology Officer, Chairman and a significant stockholder of SpaceX. Additionally, DFJ funds are a significant stockholder of SolarCity of which E. Musk is the Chairman. The Elon Musk Revocable Trust dated July 22, 2003 is a limited partner of Draper Fisher Jurvetson Fund X, L.P., which is managed by DFJ, with a subscription commitment of \$250,000.

(e) Defendant Ehrenpreis lacks independence as he is a minority investor in SpaceX where defendant E. Musk is the Chief Executive Officer, Chief Technology Officer, Chairman and a significant stockholder.

(f) Defendant Buss lacks independence as he is executive vice president of finance and administration and chief financial officer of Cypress. In 2013, Cypress provided semiconductors to a third party manufacturer engaged by Tesla to build certain components for use in its Model S vehicle. This indirect supply relationship continues in 2014. Payments by Tesla to the third party manufacturer in respect of the semiconductors supplied by Cypress were approximately \$605,000 in 2013 and are expected to be approximately \$766,000 in 2014.

(g) Defendants E. Musk, Jurvetson and Gracias further lack independence as a result of their business dealings in connection with Solar City and certain Solar City Agreements as described in the Proxy Statement filed on April 24, 2014. The Proxy Statement states, in part, the following:

We have entered into a number of agreements with SolarCity. Mr. Elon Musk is a significant stockholder of SolarCity and has been its Chairman since July 2006. Mr. Jurvetson, a member of our Board of Directors, is a managing director of Draper Fisher Jurvetson which is a significant stockholder of SolarCity. Mr. Gracias, a member of our Board of Directors, is a minor shareholder of SolarCity

1 and a member of the board of directors of SolarCity. Mr. Straubel, our Chief
2 Technical Officer, is a member of the board of directors of SolarCity.

3 In January 2011, we entered into a professional services agreement with SolarCity
4 under which Tesla subcontracted with SolarCity for SolarCity to pay Tesla to
5 provide a variety of design, engineering and consulting services as part of a grant
6 under the California Solar Initiative of the California Public Utilities Commission.
7 As of December 31, 2012, all work under this agreement has been completed.
8 Pursuant to this agreement, payment of a portion of the billable amount was
9 deferred until 2013. Accordingly, we recognized approximately \$47,000 in
10 revenue under this agreement in 2013.

11 In the past, we have engaged SolarCity from time to time to install our
12 Superchargers and related equipment, including solar panels provided by
13 SolarCity for use as part of the Superchargers. SolarCity has invoiced Tesla
14 approximately \$748,000 for such installation services and equipment provided by
15 SolarCity during 2013.

16 In September 2012, we entered into a professional services agreement with
17 SolarCity (the "Services Agreement") whereby we agreed to refer to SolarCity
18 our customers who have indicated their intent to consult with SolarCity for the
19 installation of in-home electric vehicle supply equipment for use with Tesla
20 vehicles. Under this agreement, SolarCity agreed to pay us referral fees in respect
21 of each customer who purchases from SolarCity solar photovoltaic equipment or
22 energy efficiency upgrade services. During the 2013 fiscal year, approximately
23 \$27,000 in aggregate became payable to us by SolarCity for such referral fees.
24 The Services Agreement did not provide for any payment obligations by Tesla.
25 The Services Agreement expired in September 2013.

26 In April 2013, we entered into a supply agreement with SolarCity under which we
27 will supply SolarCity with various sizes of stationary batteries for integration with
28 solar panels by SolarCity to create stationary power sources for sale or lease to
residential and commercial customers. We received approximately \$1.6 million
from SolarCity during fiscal year 2013 for stationary batteries we supplied to
SolarCity pursuant to this supply agreement.

29 (h) Defendants E. Musk, Jurvetson, K. Musk, and Gracias also lack
30 independence as a result of their business dealings in connection with SpaceX and certain
31 SpaceX Agreements as described in the Proxy Statement filed on April 24, 2014. The Proxy
32 Statement states, in part, the following:

33 Elon Musk, our Chief Executive Officer, Product Architect and Chairman, is also
34 the Chief Executive Officer and a significant stockholder of SpaceX. Steve
35 Jurvetson and Kimbal Musk, two members of our Board of Directors, are also

members of the board of directors of SpaceX and Antonio Gracias, another member of our Board of Directors, holds a minority interest in SpaceX and is also a member of the board of directors of SpaceX. SpaceX has from time to time in the past paid for facilities and services expenses on our behalf, for which we subsequently reimbursed SpaceX. SpaceX has also provided us, at no cost, with use of certain enterprise software developed by it.

We also receive rental payments from SpaceX for leasing to SpaceX certain car parking spaces located in the south parking lot of our Los Angeles, CA Design Studio. During the 2013 fiscal year, we received approximately \$19,000 in such rental payments.

In February 2014, Tesla and SpaceX entered into an agreement relating to Tesla's use of an aircraft leased and operated by SpaceX (the "Airplane Agreement"). Pursuant to the Airplane Agreement, Tesla will pay SpaceX for its use of the aircraft at rates to be determined by the parties from time to time, subject to rules of the Federal Aviation Administration governing such arrangements. The Airplane Agreement was retroactive to cover Tesla's use of the SpaceX aircraft beginning in September 2013. Tesla paid SpaceX approximately \$229,000 under the Airplane Use Agreement for Tesla's use of the plane in 2013.

FIRST CAUSE OF ACTION

(Breach of Fiduciary Duty)

104. Plaintiff incorporates by reference and realleges each and every allegation as set forth above as if fully set forth herein.

105. Each of the Individual Defendants owed the Company and its shareholders the highest duties of loyalty, good faith, honesty, and care in conducting their affairs and the business of the Company.

106. Under the current circumstances, the Individual Defendants also had a duty to:

- (a) act in the interests of the Company and all of its equity owners; and
- (b) act in accordance with the fundamental duties of loyalty, care and good faith.

107. Because of their respective positions with the Company, the Individual Defendants also are required to:

1 (a) act independently to ensure that the best interest of the corporation and its
2 shareholders take precedence over any interest possessed by a director, officer, or controlling
3 shareholder; and

4 (b) ensure that if there are conflicts of interest between the Individual
5 Defendants' interests and their fiduciary obligations of loyalty, that they are resolved in the best
6 interest of the Company and its public shareholders

7 108. In causing or allowing the Company to fail to maintain adequate internal controls
8 and procedures related to public disclosures, the Individual Defendants have not taken any steps
9 to protect the interests of the Company and, in fact, have breached their fiduciary duties of care,
10 loyalty, reasonable inquiry, oversight, good faith and supervision.

11 109. Each of the Individual Defendants had actual or constructive knowledge that they
12 had caused the Company to engage in improper practices. These actions could not have been a
13 good faith exercise of prudent business judgment to protect and promote the Company's
14 corporate interests.

15 110. As a direct and proximate result of the Individual Defendants' failure to perform
16 their fiduciary obligations, Tesla has sustained significant damages.

17 111. Accordingly, Plaintiff, as a shareholder of the Company, seeks monetary
18 damages, injunctive remedies, and other forms of equitable relief on Tesla's behalf.

19 112. Plaintiff and the Company have no adequate remedy at law.

20 WHEREFORE, Plaintiff demands judgment as follows:

21 A. Authorizing the maintenance of this action as a derivative action, with Plaintiff as
22 the derivative Lead Plaintiff;

23 B. Declaring that the Individual Defendants have violated their fiduciary duties to
24 the Company;

1 C. Awarding compensatory damages against defendants individually and severally in
2 an amount to be determined at trial, together with pre-judgment and post-judgment interest at the
3 maximum rate allowable by law;

4 D. Directing Tesla to take all necessary actions to reform and improve their corporate
5 governance and internal procedures to comply with applicable laws and to protect Tesla and its
6 shareholders from a repeat of the damaging events that occurred during the relevant time period,
7 including, but not limited to, putting forward for shareholder vote resolutions for amendments to
8 the Company's By-Laws or Articles of Incorporation and taking such other action as may be
9 necessary to place before shareholders for a vote the following Corporate Governance Policies:

10 (i) a proposal to strengthen the Boards' supervision of operations and develop
11 and implement procedures for greater shareholder input into the policies and guidelines of the
12 Board;

13 (ii) a provision to permit shareholders of Tesla to nominate at least three
14 candidates for election to the Board; and

15 (iii) appropriately test and then strengthen the internal compliance and control
16 functions;

17 E. Awarding Plaintiff the costs and disbursements of this action, including
18 reasonable allowances for Plaintiff's attorneys' and experts' fees and expenses; and

19 F. Granting such other or further relief as may be just and proper under the
20 circumstances.

21 **JURY DEMAND**

22 Plaintiff demands a trial by jury.
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25
26
27

1 Dated: June 18, 2014

**THE ALEXANDER FIRM P.C.
A Professional Law Corporation**

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**LAW OFFICE OF DEBRA S.
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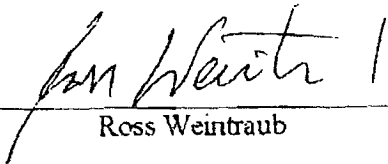
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28 *Attorneys for Plaintiff*

VERIFICATION

I, Ross Weintraub, am the plaintiff in the within action and a citizen of Pennsylvania. I have read the foregoing Verified Shareholder Derivative Complaint and know the contents thereof, except as to the matters stated therein to be alleged on information and belief, and as to those matters, I believe them to be true.

June 17, 2014



Ross Weintraub